

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VICTOR LAMAR WATERFORD,

Petitioner,

Case Number: 11-10664

v.

HONORABLE AVERN COHN

GREG McQUIGGIN,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR A CERTIFICATE OF
APPEALABILITY (Doc. 23)**

This is a habeas case under 28 U.S.C. § 2254. Petitioner Victor Lamar Waterford (Petitioner) is a state prisoner who challenged his 1991 sentence of 560-840 months, consecutive to a two year term of imprisonment, following his convictions for second degree murder and felony firearm. Petitioner claimed he was incarcerated in violation of his constitutional rights.

The matter was referred to a magistrate judge, before whom Respondent filed a motion for summary judgment on the grounds that the petition is barred by the concurrent sentencing doctrine and by the statute of limitations. The magistrate judge issued a MJRR recommending that Respondent's motion be granted because the petition was not timely filed. (Doc. 17) Petitioner objected. (Doc. 18) The Court overruled Petitioner's objections, adopted the MJRR, and granted Respondent's motion. See Order filed January 6, 2011 (Doc. 19). The Court also declined to issue a

certificate of appealability (COA). See Doc. 19 at p. 3.

Despite the Court's denial of a COA, Petitioner has now filed a motion for a COA. Because the Court has already denied a certificate of appealability, the motion is moot. Moreover, construing Petitioner's motion as a motion for reconsideration, it is DENIED. See E.D. Mich. LR 7.1(h)(3). As explained in the MJRR and the Court's January 6, 2012 order, Petitioner is not entitled to a certificate of appealability because reasonable jurists would not debate that the petition is time barred and Petitioner has failed to overcome the time bar based on either equitable tolling or by showing actual innocence. Nothing in Petitioner's motion convinces the Court that a certificate of appealability should issue.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: February 9, 2012

I hereby certify that a copy of the foregoing document was mailed to Victor Waterford, 217934, Chippewa Correctional Facility, 4269 W. M-80, Kincheloe, MI 49784 and the attorneys of record on this date, February 9, 2012, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160